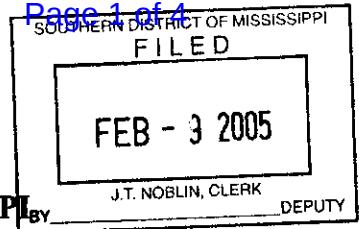


**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**



GABRIEL LIZANA

PLAINTIFF

v.

CIVIL ACTION NO. 3:04CV693-B-N

LEON SHIELDS, et al.

DEFENDANTS

ANSWER

COME NOW, Defendants, Jerry Kern and Curtis Roach, and file this their answer and defenses to the complaint as filed herein against them by Plaintiff as follows:

I & II. PARTIES

Admitted.

III. STATEMENT OF CLAIM

Defendants deny each and every allegation set forth under paragraph III. of the complaint entitled "Statement of Claim", including each sub-paragraph thereunder and any and all attachments, exhibits or addenda thereto.

IV. RELIEF

Defendants deny each and every allegation set forth under paragraph IV. of the complaint entitled "Relief", including any and all sub-paragraphs thereunder and each and every attachment, exhibit or addenda thereto.

WHEREFORE, Defendants having fully answered or otherwise responding to the allegations set forth in Plaintiff's complaint as exhibited herein against them, deny that Plaintiff is entitled to relief in any form or amount whatsoever against them or any one of them. Defendants now move the court for an order dismissing the complaint with prejudice at Plaintiff's costs.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Plaintiff's complaint fails to state a claim against the Defendants upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The court lacks jurisdiction over the parties in this cause.

THIRD AFFIRMATIVE DEFENSE

The Defendants are entitled to and hereby affirmatively plead their Eleventh Amendment immunity to suit and liability in this cause, including relief from discovery procedures.

FOURTH AFFIRMATIVE DEFENSE

The Defendants are entitled to and hereby affirmatively plead their federal law qualified immunity to suit and liability in this cause, including relief from discovery procedures.

FIFTH AFFIRMATIVE DEFENSE

The Defendants are entitled to and hereby affirmatively plead their state law qualified immunity defenses to suit and liability in this cause, including relief from discovery procedures.

SIXTH AFFIRMATIVE DEFENSE

The Defendants are entitled to and hereby affirmatively plead their sovereign immunity defenses to suit and liability in this cause pursuant to and inclusive of the provisions of § 11-46-1, et, seq., Miss. Code of 1972, as annotated and amended.

SEVENTH AFFIRMATIVE DEFENSE

The Plaintiff, by and through his complaint, and/or previous complaints, if applicable, is subject to the provisions of 18 U.S.C. § 3626, including the restrictions, limitations and penalties

therein.

EIGHTH AFFIRMATIVE DEFENSE

The Plaintiff by and through his complaint, and previous complaints, if applicable, is subject to the provisions of 28 U.S.C. § 1915.

NINTH AFFIRMATIVE DEFENSE

The Plaintiff, by and through his complaint, and previous complaints, if applicable, is subject to the provisions of § 47-5-138 Miss. Code of 1972 as annotated and amended.

TENTH AFFIRMATIVE DEFENSE

The Plaintiff's Complaint is subject to the exhaustion of remedies requirement of 42 U.S.C. § 1997e, and this action is barred for failure to comply therewith.

Respectfully submitted,

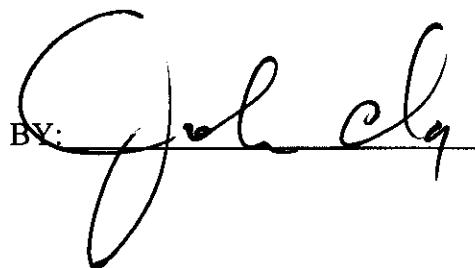
JERRY KERN and CURTIS ROACH

DEFENDANTS

**JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI**

LEONARD VINCENT
MDOC SENIOR STAFF ATTORNEY
MS BAR NO.: 6615

JOHN L. CLAY
SPECIAL ASSISTANT ATTORNEY GENERAL
MS BAR NO.: 6286

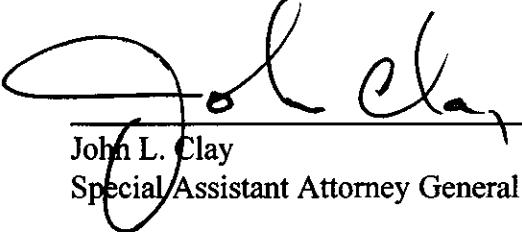
BY: 

CERTIFICATE OF SERVICE

I, John L. Clay, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day caused to be mailed, via United States Postal Service, first class postage prepaid, a true and correct copy of the foregoing **Answer** in the above-styled and numbered cause to the following:

Gabriel Lizana, #L7444
CMCF, 3B-1, A-Zone, Bed #59
P.O. Box 88550
Pearl, MS 39288-8550

This, the 8 day of February, 2005.



John L. Clay

Special Assistant Attorney General

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